

1 JOHN K. VAN DE KAMP, Attorney General  
of the State of California

2 VIVIEN HARA HERSH

Deputy Attorney General

3 6000 State Building

San Francisco, California 94102

4 Telephone: (415) 557-1346

5 Attorneys for Complainant

6  
7 BEFORE THE  
8 DIVISION OF MEDICAL QUALITY  
9 BOARD OF MEDICAL QUALITY ASSURANCE  
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation )

12 Against: )

No. D-3244

13 JON KIMMERLE MILLER, M.D. )

730 Dolores Street )

14 Santa Cruz, California 95062 )

Certificate No. G-17900 )

15 Respondent. )

PROPOSED DECISION

PURSUANT TO STIPULATION

16  
17 IT IS HEREBY STIPULATED by and between respondent

18 Jon Kimmerle Miller, M.D. (hereinafter "respondent") and

19 complainant herein Kenneth J. Wagstaff in his official capacity

20 as Executive Director of the Board of Medical Quality Assurance,

21 State of California by and through his attorney John K. Van De

22 Kamp, Attorney General of the State of California by Vivien

23 Hara Hersh, Deputy Attorney General, as follows:

24 1. Respondent has received and read the accusation  
25 which is presently on file and pending against him in case No.  
26 D-3244 before the Board of Medical Quality Assurance, State of  
27 California.

1           2. Kenneth J. Wagstaff, complainant in the case, is  
2 the Executive Director of the Board of Medical Quality  
3 Assurance, State of California and made the charges and  
4 allegations in accusation No. D-3244 solely in his official  
5 capacity. Respondent's license history and status as set  
6 forth in paragraph 2 of the accusation is true and correct.

7           3. Respondent acknowledges that he may, but need  
8 not, be represented by counsel at any or all stages of the  
9 proceedings in case No. D-3244, and respondent knowingly  
10 and voluntarily waives his right to be represented by counsel.

11           4. Respondent has fully discussed the charges and  
12 allegations contained in said accusation No. D-3244 on file  
13 with the Division of Medical Quality, Board of Medical Quality  
14 Assurance, with representatives of complainant and respondent  
15 has been fully advised with regard to his rights in this matter.

16           5. Respondent is fully aware of his right to a  
17 hearing on the charges and allegations contained in said  
18 accusation No. D-3244, his right to reconsideration, judicial  
19 review and all other rights which may be accorded him pursuant  
20 to the California Administrative Procedure Act and other laws  
21 of the State of California.

22           6. Respondent hereby freely and voluntarily waives  
23 his right to a hearing on the charges and allegations contained  
24 in accusation No. D-3244 in order to enter into this  
25 stipulation, and he further agrees to waive his right to  
26 reconsideration, judicial review, and any and all rights  
27 which may be accorded him by the California Administrative

1 Procedure Act and other laws of the State of California.

2 7. Respondent admits that the factual allegations  
3 in accusation No. D-3244 are true, to wit:

4 Respondent has used and administered to himself  
5 alcoholic beverages to an extent dangerous or injurious  
6 to himself, others, and the public and/or has been  
7 convicted of more than one misdemeanor involving the  
8 use, consumption and self-administration of alcoholic  
9 beverages as is more particularly set forth hereafter:

10 (a) On or about December 19, 1975, respondent  
11 was arrested for a violation of Vehicle Code section  
12 23102(a) (driving while under the influence of  
13 intoxicating beverages or drugs). In fact, respondent  
14 was operating a vehicle while under the influence of  
15 alcohol. On or about January 26, 1976, in Sonoma  
16 County Municipal Court case No. 33876 TCR, pursuant to  
17 a negotiated plea, respondent pleaded guilty to a  
18 lesser and included charge of violating Vehicle Code  
19 section 23103 (reckless driving) and fined a total of  
20 \$125.00 and placed on summary probation.

21 (b) On or about October 21, 1976, respondent was  
22 arrested for a violation of Vehicle Code section  
23 23102(a). In fact, respondent was operating a vehicle  
24 while under the influence of alcohol. On December 28,  
25 1976, in Sonoma County Municipal Court Case No.  
26 39723 TRC, pursuant to a negotiated plea, respondent  
27 pleaded guilty to a lesser and included offense of

1 violating Vehicle Code section 23103 (reckless  
2 driving) and was fined a total of \$125.00 and placed  
3 on 90 days summary probation.

4 (c) On or about July 16, 1978, respondent was  
5 arrested in Cotati, California and charged with  
6 violations of Penal Code sections 242 (battery),  
7 415.1 (disturbing the peace), 148 (resisting arrest)  
8 and 647f (public drunkenness). In fact, respondent  
9 was under the influence of alcoholic beverages to  
10 such an extent that he was unable to exercise care  
11 for his own safety or for the safety of others.

12 On or about October 24, 1978, pursuant to a  
13 negotiated plea, respondent pleaded nolo contendere  
14 to one count of disturbing the peace (Penal Code  
15 section 415.1) and was fined a total of \$55.00,  
16 placed on six months summary probation, and ordered  
17 to seek a program of alcoholic rehabilitation and  
18 pursue it to completion.

19 (d) On or about January 11, 1980, respondent  
20 was arrested in Calistoga, California and charged  
21 with a violation of Vehicle Code sections 23102(a)  
22 (driving while intoxicated) and 24252(a) (driving  
23 without working headlights). On or about April 16,  
24 1980, respondent was found guilty after a jury trial  
25 of the charges made, and on May 9, 1980, respondent  
26 was referred to the driver evaluation program, fined  
27 a total of \$415.00, and placed on summary probation.

1 (e) On or about February 16, 1983, respondent  
2 was arrested in San Diego, California for a violation  
3 of Vehicle Code sections 23152(a) (driving under the  
4 influence of an alcoholic beverage) and 23152(b)  
5 (driving while having 0.10 percent or more, by weight,  
6 of alcohol in his blood) with one prior conviction  
7 charged. In fact, respondent was operating a vehicle  
8 while having a 0.15 percent blood alcohol level.  
9 On or about August 24, 1983, pursuant to a negotiated  
10 plea, respondent admitted his prior conviction  
11 (May 9, 1980) and pleaded guilty to the violation of  
12 Vehicle Code section 23152(a). On September 7, 1983,  
13 respondent was sentenced to 365 days in the county  
14 jail, suspended, 48 hours actual custody, a \$600.00  
15 fine, and 18 months formal probation on terms and  
16 conditions including a drinking driver program,  
17 restriction for one year on driving: traveling to  
18 and from work only, requirement of liability  
19 insurance, no further arrests for driving while  
20 intoxicated or reckless driving and no driving  
21 under the influence of alcohol.

22 8. Respondent further admits that the acts admitted  
23 in paragraph 7 above constitute unprofessional conduct under  
24 Business and Professions Code section 2239 and therefore are  
25 grounds for disciplinary action against respondent's  
26 physician's and surgeon's certificate pursuant to Business  
27 and Professions Code section 2234.

1           9. In consideration of the admissions of  
2 respondent, IT IS HEREBY STIPULATED AND AGREED that the Board  
3 of Medical Quality Assurance, State of California, may issue,  
4 as to said grounds for disciplinary action, the following  
5 order:

6           Certificate No. G-17900, heretofore issued  
7 to respondent by the Board of Medical Quality Assurance,  
8 is hereby revoked; provided, however, that said  
9 revocation is stayed for a period of five (5) years,  
10 during which time respondent shall be placed upon  
11 probation, subject separately and severally to the  
12 following terms and conditions:

13           (a) Within 30 days of the effective date of this  
14 decision, and on a periodic basis thereafter as may be  
15 required by the Division of Medical Quality, Board of Medical  
16 Quality Assurance (hereinafter "the Division") or its  
17 designee, respondent shall undergo a psychiatric evaluation  
18 by a Division-appointed psychiatrist who shall furnish a  
19 psychiatric report to the Division or its designee.

20           If respondent is required by the Division or its  
21 designee to undergo psychiatric treatment, respondent shall  
22 within 30 days of the requirement notice submit to the Division  
23 for its prior approval the name and qualifications of a  
24 psychiatrist of respondent's choice. Upon approval of the  
25 treating psychiatrist, respondent shall undergo and continue  
26 psychiatric treatment until further notice from the Division.  
27 Respondent shall have the treating psychiatrist submit

1 quarterly status reports to the Division.

2 Respondent shall not engage in the practice of  
3 medicine until notified by the Division of its determination  
4 that respondent is mentally fit to practice safely.

5 (b) Within 30 days of the effective date of this  
6 decision, and on a periodic basis thereafter as may be required  
7 by the Division or its designee, respondent shall undergo a  
8 medical evaluation by a Division-appointed physician who  
9 shall furnish a medical report to the Division or its designee.

10 If respondent is required by the Division or its  
11 designee to undergo medical treatment, respondent shall within  
12 30 days of the requirement notice submit to the Division for  
13 its prior approval the name and qualifications of a physician  
14 of respondent's choice. Upon approval of the treating  
15 physician, respondent shall undergo and continue medical  
16 treatment until further notice from the Division. Respondent  
17 shall have the treating physician submit quarterly reports to  
18 the Division.

19 Respondent shall not engage in the practice of  
20 medicine until notified by the Division of its determination  
21 that respondent is medically fit to practice safely.

22 (c) Within 60 days of the effective date of this  
23 decision, respondent shall take and pass an oral clinical  
24 examination to be administered by the Division or its designee.  
25 If respondent fails this examination, respondent must wait  
26 three months between reexaminations, except that after three  
27 failures respondent must wait one year to take each necessary

1 reexamination thereafter. The Division shall pay the cost of  
2 the first examination and respondent shall pay the costs of any  
3 subsequent examinations.

4 If respondent fails to take and pass this examination  
5 by the end of the first year of probation, respondent shall  
6 cease the practice of medicine until this examination has been  
7 successfully passed and respondent has been so notified by the  
8 Division in writing.

9 (d) Within 30 days of the effective date of this  
10 decision, respondent shall submit to the Division for its  
11 prior approval an alcohol rehabilitation program in which  
12 respondent shall participate at least weekly for at least 50  
13 weeks of the calendar year for the duration of probation.  
14 In the quarterly reports to the Division, respondent shall  
15 provide documentary evidence of continuing participation in  
16 this program.

17 (e) Respondent is prohibited from engaging in solo  
18 practice. Within 30 days of the effective date of this decision,  
19 respondent shall submit to the Division, and receive its  
20 prior approval, for a plan of practice limited to a supervised,  
21 structured environment in which respondent's activities will  
22 be overseen and supervised by another physician.

23 (f) Within 60 days of the effective date of this  
24 decision, respondent shall submit to the Division for its prior  
25 approval a community service program in which respondent shall  
26 provide free medical services on a regular basis to a community  
27 or charitable facility or agency for at least 15 hours a month



1 for the first 18 months of probation.

2 (g) Respondent shall abstain completely from the use  
3 of alcoholic beverages.

4 Respondent shall abstain completely from the personal  
5 use or possession of controlled substances as defined in the  
6 California Uniform Controlled Substances Act, and dangerous  
7 drugs as defined by Section 4211 of the Business and Professions  
8 Code, or any drugs requiring a prescription. Orders forbidding  
9 respondent from personal use or possession of controlled  
10 substances or dangerous drugs do not apply to medications  
11 lawfully prescribed to respondent for a bona fide illness or  
12 condition by another practitioner.

13 (h) Respondent shall obey all federal, state, and  
14 local laws, and all rules governing the practice of medicine  
15 in California.

16 (i) Respondent shall submit quarterly declarations  
17 under penalty of perjury on forms provided by the Division,  
18 stating whether there has been compliance with all the  
19 conditions of probation.

20 (j) Respondent shall comply with the Division's  
21 probation surveillance program.

22 (k) Respondent shall appear in person for interviews  
23 with the Division's medical consultant upon request at various  
24 intervals and with reasonable notice.

25 (l) In the event respondent should leave California  
26 to reside or to practice outside the State, respondent must  
27 notify the Division in writing of the dates of departure and

1 return. Periods of residency or practice outside California  
2 will not apply to the reduction of this probationary period.

3 10. Upon successful completion of probation,  
4 respondent's certificate will be fully restored. If respondent  
5 violates probation in any respect, the Division, after giving  
6 respondent notice and the opportunity to be heard, may revoke  
7 probation and carry out the disciplinary order that was stayed.  
8 If an accusation or petition to revoke probation is filed  
9 against respondent during probation, the Division shall have  
10 continuing jurisdiction until the matter is final, and the  
11 period of probation shall be extended until the matter is final.

12 11. IT IS FURTHER STIPULATED AND AGREED that the  
13 terms set forth herein shall be null and void, and in no  
14 way binding upon the parties hereto, unless and until  
15 accepted by the Division of Medical Quality, Board of Medical  
16 Quality Assurance, State of California, as its decision in  
17 this matter.

18  
19 JOHN K. VAN DE KAMP  
20 Attorney General of the State  
of California

21  
22 DATED: January 4, 1985

23 Vivien Hara Hersh  
VIVIEN HARA HERSH  
24 Deputy Attorney General

25 Attorneys for Complainant  
26  
27

1 DATED: 12/31/84

Jon K. Miller MD  
JON KIMMERLE MILLER  
Respondent

2  
3  
4  
5  
6 I hereby certify that I have read this stipulation  
7 in its entirety, that I fully understand the legal  
8 significance and consequences thereof, and in witness thereof  
9 I affix my signature this 31<sup>st</sup> day of December, 1984  
10 at Spokane, Wa. 99205, W. 322 Park Place.

11  
12  
13 Jon K. Miller MD  
JON KIMMERLE MILLER  
14 Respondent

15  
16  
17 DECISION AND ORDER

18 The above Stipulation is accepted and shall become  
19 the decision of the Board of Medical Quality Assurance  
20 effective March 13, 1985.

21 IT IS SO ORDERED this 13th day of March,  
22 1985.

23  
24 Miller Medearis  
MILLER MEDEARIS  
25 Secretary-Treasurer  
26 Board of Medical Quality Assurance  
27 State of California  
Division of Medical Quality

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7 BEFORE THE  
DIVISION OF MEDICAL QUALITY  
8 BOARD OF MEDICAL QUALITY ASSURANCE  
STATE OF CALIFORNIA  
9

10  
11 In the Matter of the Accusation )  
12 Against: ) No. D-3244  
13 JON KIMMERLE MILLER, M.D. ) ACCUSATION  
730 Dolores Street )  
14 Santa Cruz, California 95062 )  
Certificate No. G-17900 )  
15 Respondent. )  
16

17 Kenneth J. Wagstaff, complainant herein, charges and  
18 alleges as follows:

19 1. He is the Executive Director of the Board of  
20 Medical Quality Assurance, State of California (hereinafter  
21 "the Board") and makes these charges and allegations solely in  
22 his official capacity.

23 2. At all times mentioned herein, respondent Jon  
24 Kimmerle Miller, M.D. (hereinafter "respondent") has held  
25 physician's and surgeon's certificate number G-17900, which  
26 was issued to him by the Board on or about January 13, 1970 and  
27 which is in good standing at the present time. No prior

1 disciplinary action has been taken against said certificate.

2 3. Section 2220 (formerly sections 2116 and 2360)  
3 of the Business and Professions Code 1/ provides that the  
4 Division of Medical Quality of the Board (hereinafter "the  
5 Division") may take action against all persons guilty of  
6 violating the provisions of the Medical Practice Act (Business  
7 and Professions Code sections 2000 et seq.).

8 4. Section 2234 (formerly section 2361) provides, in  
9 pertinent part, that the Division shall take action against any  
10 licensee who is charged with unprofessional conduct.

11 Unprofessional conduct is defined therein to include, but not  
12 to be limited to; violating or attempting to violate, directly  
13 or indirectly . . . any provision of the Medical Practice Act,  
14 gross negligence, repeated negligent acts, and incompetence.

15 5. Section 2239(a) (formerly section 2390) states in  
16 pertinent part, that the use or prescribing for or administering  
17 to himself or herself . . . of alcoholic beverages, to the  
18 extent, or in such a manner as to be dangerous or injurious to  
19 the licensee, or to any other person or to the public, or to  
20 the extent that such use impairs the ability of the licensee to  
21 practice medicine safely or more than one misdemeanor or any  
22 felony involving the use, consumption, or self-administration  
23 of any of the substances mentioned in this section or any  
24 combination thereof, constitutes unprofessional conduct.  
25 The record of the conviction is conclusive evidence of such

26  
27 1. All statutory references are to the Business and  
Professions Code unless otherwise indicated.

1 unprofessional conduct.

2 6. Section 2239(b) states, in pertinent part, that  
3 a plea or verdict of guilty or a conviction following a plea  
4 of nolo contendere is deemed to be a conviction within the  
5 meaning of this section.

6 7. Respondent has subjected his license to  
7 disciplinary action pursuant to section 2239 in that he has  
8 used and administered to himself alcoholic beverages to an  
9 extent dangerous or injurious to himself, others, and the public  
10 and/or has been convicted of more than one misdemeanor  
11 involving the use, consumption and self-administration of  
12 alcoholic beverages as is more particularly alleged hereafter:

13 (a) On or about December 19, 1975, respondent  
14 was arrested for a violation of Vehicle Code section  
15 23102(a) (driving while under the influence of  
16 intoxicating beverages or drugs). In fact, respondent  
17 was operating a vehicle while under the influence of  
18 alcohol. On or about January 26, 1976, in Sonoma  
19 County Municipal Court case No. 33876 TCR, pursuant to  
20 a negotiated plea, respondent pleaded guilty to a lesser  
21 and included charge of violating Vehicle Code section  
22 23103 (reckless driving) and fined a total of \$125.00  
23 and placed on summary probation.

24 (b) On or about October 21, 1976, respondent was  
25 arrested for a violation of Vehicle Code section 23102(a).  
26 In fact, respondent was operating a vehicle while under  
27 the influence of alcohol. On December 28, 1976, in

1 Sonoma County Municipal Court Case No. 39723 TCR,  
2 pursuant to a negotiated plea, respondent pleaded  
3 guilty to a lesser and included offense of violating  
4 Vehicle Code section 23103 (reckless driving) and  
5 was fined a total of \$125.00 and placed on 90 days  
6 summary probation.

7 (c) On or about July 16, 1978, respondent was  
8 arrested in Cotati, California and charged with  
9 violations of Penal Code sections 242 (battery),  
10 415.1 (disturbing the peace), 148 (resisting arrest)  
11 and 647f (public drunkenness). In fact, respondent  
12 was under the influence of alcoholic beverages to  
13 such an extent that he was unable to exercise care  
14 for his own safety or for the safety of others.  
15 On or about October 24, 1978, pursuant to a negotiated  
16 plea, respondent pleaded nolo contendere to one count  
17 of disturbing the peace (Penal Code section 415.1)  
18 and was fined a total of \$55.00, placed on six months  
19 summary probation, and ordered to seek a program of  
20 alcoholic rehabilitation and pursue it to completion.

21 (d) On or about January 11, 1980, respondent was  
22 arrested in Calistoga, California and charged with a  
23 violation of Vehicle Code sections 23102(a) (driving  
24 while intoxicated) and 24252(a) (driving without working  
25 headlights). On or about April 16, 1980, respondent  
26 was found guilty after a jury trial of the charges  
27 made, and on May 9, 1980, respondent was referred to

1 the driver evaluation program, fined a total of  
2 \$415.00, and placed on summary probation.

3 (e) On or about February 16, 1983, respondent  
4 was arrested in San Diego, California for a violation  
5 of Vehicle Code sections 23152(a) (driving under the  
6 influence of an alcoholic beverage) and 23152(b)  
7 (driving while having 0.10 percent or more, by weight,  
8 of alcohol in his blood) with one prior conviction  
9 charged. In fact, respondent was operating a vehicle  
10 while having a 0.15 percent blood alcohol level.  
11 On or about August 24, 1983, pursuant to a negotiated  
12 plea, respondent admitted his prior conviction  
13 (May 9, 1980) and pleaded guilty to the violation of  
14 Vehicle Code section 23152(a). On September 7, 1983,  
15 respondent was sentenced to 365 days in the county  
16 jail, suspended, 48 hours actual custody, a \$600.00  
17 fine, and 18 months formal probation on terms and  
18 conditions including a drinking driver program,  
19 restriction for one year on driving: traveling to and  
20 from work only, requirement of liability insurance,  
21 no further arrests for driving while intoxicated or  
22 reckless driving and no driving under the influence  
23 of alcohol.

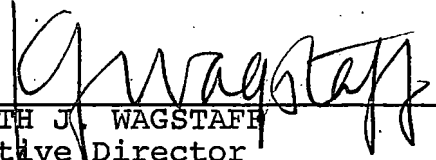
24 8. Respondent's acts as alleged in paragraph 7  
25 above, indicate a pattern of non-controlled alcohol abuse and  
26 jointly or in any combination thereof, constitute unprofessional  
27 conduct and therefore are grounds for disciplinary action



1 pursuant to Business and Professions Code sections 2239 and  
2 2234.

3 WHEREFORE, complainant prays that the Board hold a  
4 hearing on the matters alleged herein and thereafter issue an  
5 order suspending or revoking certificate No. G-17900 issued  
6 to respondent and taking such other and further action as is  
7 deemed necessary and proper.

8  
9 DATED: September 11, 1984

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11   
12 KENNETH J. WAGSTAFF  
13 Executive Director  
14 Board of Medical Quality Assurance  
15 State of California

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Complainant